

Date of decision: 1-5-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(1-5-1996)

Mr. B. N. Patel for the petitioner
Ms. Sejal Mandavia for the respondents.

ORAL JUDGMENT:

Heard the learned counsel for the parties.

The respondents have not filed reply to the writ petition. In absence of reply to the writ petition, the averments made by the petitioner in the petition stands uncontroverted. The petitioner was placed under suspension on 11-12-1974 in connection with investigation, pending trial, of a criminal case. During the pendency of the trial of the criminal case, under order dated 27th August, 1976 the petitioner was ordered to be reinstated back in service. In the criminal case the petitioner was acquitted on 27th December, 1979. The order of acquittal was taken in appeal before this Court by the State Government, but the appeal has also been dismissed on 14th August, 1980. On 12th July, 1980 the petitioner was promoted to the post of Deputy Mamlatdar which post he joined on 2-8-1980. It was a routine temporary promotion. Juniors to the petitioners were given promotion on 18-9-1974 when he was under suspension and the criminal case was pending. The respondents, under order dated 13-8-1984, ordered for regularisation of the services of the petitioner during suspension. He was given deemed date of promotion to the post of Deputy Mamlatdar on 18-9-1974. But he was given only notional benefits of promotion and no monetary benefits were given. The petitioner filed this writ petition with the prayer that the respondents may be directed to pay him difference of salary for the period from 18-9-1974 to 1-8-1980 on the post of Deputy Mamlatdar.

2. Ms. Sejal Mandavia, learned counsel for the respondents contended that in view of the circular dated 30th March, 1970 the petitioner is not entitled to monetary benefits for the period from 18-9-1974 to 1-8-1980 on the principle of 'no work no pay'. Here is a case where the petitioner has been acquitted in the criminal case and the petitioner claims promotion from deemed date, i.e. the date from which his juniors were promoted. It is also worthwhile to note that the criteria for promotion is seniority cum merit. When that is the position, I fail to see any justification in the action of the respondents in giving the petitioner only notional benefits.

3. I have gone through the circular also, the validity of which has been challenged by the petitioner in this petition, and prayer for quashing the same has been made by him. I do not consider it necessary to go on the question of validity of the circular for quashing the same in view of the decision of the Supreme Court in the case of Sulekh Chand & Salek Chand vs. Commissioner of Police, reported in JT 1995 (1) S.C. 23. It is not in dispute that the petitioner was overlooked in the matter of promotion only on the ground of pendency of criminal case in which he has been acquitted. Taking into consideration the facts and

circumstances of the case, I am satisfied that the action of the respondents to give only notional benefits to the petitioner, and not the actual monetary benefits of promotion, on his promotion to the post of Deputy Mamlatdar for the period from 18-9-1974 to 1-8-1980 is illegal.

4. The order dated 13-8-1984 annexure-B, and the order dated 24-12-1985 annexure-D are set aside to the aforesaid extent. The respondents are directed to determine the arrears of salary payable to the petitioner for the period from 18-9-1974 to 1-8-1980 in the pay-scale of the post of Deputy Mamlatdar with all consequential benefits including revision of pay-scales, within a period of three months from the date of receipt of copy of this judgment and to make payment of arrears within a period a period of month thereafter. However, whatever amount already paid to the petitioner towards arrears for the aforesaid period shall be deducted from the amount of arrears so determined. Rule made absolute to the aforesaid extent. No order as to costs.

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